

Department of Energy

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Program has no appropriation for paying for developmental assistance); and

(l) Other terms and conditions, as appropriate.

919.7011 Developmental assistance.

(a) The forms of developmental assistance a Mentor may provide to a Protege include, but are not limited to:

(i) Management guidance relating to:

- (i) Financial management,
- (ii) Organizational management,
- (iii) Overall business management planning,

- (iv) Business development, and
- (v) Marketing assistance;
- (2) Engineering and other technical assistance;

(3) Noncompetitive award of subcontracts under DOE or other Federal contracts where otherwise authorized;

(4) Award of subcontracts in the Mentor's commercial activities;

(5) Progress payments based on costs;

(6) Rent-free use of facilities and/or equipment owned or leased by Mentor; and

(7) Temporary assignment of Mentor personnel to the Protege for purposes of training.

(b) Costs incurred by a Mentor to provide developmental assistance, as described in paragraph (a) of this section, are allowable only to the extent provided at 48 CFR 919.7003(b).

919.7012 Review and approval process of agreement by OSDBU.

(a) OSDBU will review the proposed Mentor-Protege Agreement under 48 CFR 919.7010 and will complete its review and assessment no later than 30 days after receipt. OSDBU will provide a copy of its assessment to the cognizant DOE technical program manager and contracting officer for review and concurrence.

(b) If OSDBU approves the Agreement, the Mentor may implement the developmental assistance program.

(c) Upon finding deficiencies that DOE considers correctable, the OSDBU will notify the Mentor and request information to be provided within 30 days that may correct the deficiencies. The Mentor may then provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after re-

ceipt by the OSDBU and the Agreement either approved or disapproved.

919.7013 Reports.

(a) Prior to performing an evaluation of a Mentor's performance under its Mentor-Protege Agreement for use in award fee evaluations, the Mentor-Protege Program Manager must consult with the cognizant DOE technical program manager and must provide a copy of the performance evaluation comments regarding the technical effort and Mentor-Protege development to the contracting officer.

(b) The DOE Mentor-Protege Program Manager must submit semi-annual reports to the cognizant contracting officer regarding the participating Mentor's performance in the Program for use in the award fee determination process.

(c) The Mentor firm must submit progress reports to the DOE Mentor-Protege Program Manager semi-annually.

919.7014 Solicitation provision.

The cognizant contracting officer must insert the provision at 952.219-70, DOE Mentor-Protege Program, in all solicitations with an estimated value in excess of the simplified acquisition threshold.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

Subpart 922.1—Basic Labor Policies

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922.7100 General.
922.7101 Clause.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11998, Mar. 28, 1984, unless otherwise noted.

Subpart 922.1—Basic Labor Policies

922.103 Overtime.

922.103-4 Approvals.

(d) *Approvals.* (1) Where the cost to the Government may be affected, approval of hours of work in excess of the normal workweek is justified only in those instances and for those employees where it can be shown that overtime would provide needed and demonstrable impetus to the accomplishment of DOE objectives and that all other means of meeting these objectives have been considered and found inadequate or not feasible. Accordingly, the Heads of Contracting Activities shall:

(i) Establish controls to prevent excess casual overtime and to assure that such overtime work is in the best interest of the Government. Casual overtime means (A) work in excess of the normal workweek (or in excess of an authorized extended workweek) which cannot be regularly scheduled in advance, or (B) regularly scheduled work in excess of the normal workweek for a period of four consecutive weeks or less; and

(ii) Establish controls to assure that any use of any extended workweek schedule is in the best interest of the Government. Extended workweek means a workweek regularly scheduled and established in excess of the normal workweek for a period in excess of four consecutive weeks.

[49 FR 11998, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994]

922.103-5 Contract clauses.

In accordance with FAR 22.101-1(e) and FAR 22.103-5, the contracting officer shall insert the clause at FAR

48 CFR Ch. 9 (10-1-00 Edition)

52.222-1, Notice to the Government of Labor Disputes, in all solicitations and contracts for protective services at DOE owned facilities requiring continuity of services for public safety and national security reasons. The contracting officer may insert this clause in other solicitations and contracts where a significant need for continuity in contract performance exists. See 937.70, Protective Services Contracting, for additional policy guidance regarding protective services.

[58 FR 36151, July 6, 1993]

Subpart 922.6—Walsh-Healey Public Contracts Act

922.608-3 Protests against eligibility.

When an eligibility determination made by the contracting officer is challenged, this protest shall be handled in accordance with procedures for agency protests against award, except the matter shall be submitted to the Department of Labor for final determination. However, if the eligibility determination challenged pertains to a small business, the protest shall be forwarded to the Small Business Administration for determination.

922.608-4 Award pending final determination.

(a) Award, as contemplated by FAR 22.608-4, may be made only with the approval of the Head of the Contracting Activity.

922.608-5 Award.

The notice required by (FAR) 48 CFR 22.608-5 is to be sent to the appropriate Department of Labor Regional Office in which the contractors place of business is located. Regional Office locations are specified at FAR 22.609.

[49 FR 11998, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994]

922.608-6 Postaward.

(c) Any postaward actions of the type discussed at FAR 22.608-6 should be coordinated in advance with the Office of Industrial Relations, Headquarters.

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922.804-2

Subpart 922.8—Equal Employment Opportunity

922.800 Scope of subpart.

This subpart implements (FAR) 48 CFR part 22, subpart 22.8. It applies to all DOE contracts and subcontracts.

[49 FR 11998, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994]

922.802 General.

922.803 Responsibilities.

(a) The Director, Office of Federal Contract Compliance Programs of the Department of Labor has been delegated authority and responsibility for carrying out the requirements of Executive Order 11246, as amended. In conjunction with the delegation, contracting officers shall be familiar with existing and any updated provisions of 41 CFR Ch. 60, and assist the Department of Labor in its compliance responsibilities. DOE contracting officers will include the applicable Equal Employment Opportunity (EEO) and Affirmative Action Program (AAP) requirements in their solicitations and obtain the applicable reports of compliance from the Office of Federal Contract Compliance Programs (OFCCP) (when required) prior to awarding of contracts. The provisions of 41 CFR Ch. 60, are applicable to all DOE contracts.

(d) The OFCCP requires that requests for pre-award clearances be directed to the OFCCP Regional Office in which the contractor's facility is (to be) located. If OFCCP finds the contractor in compliance, the contracting officer will be notified. Findings of non-compliance can be communicated to the contracting officer by the OFCCP or Headquarters Director or his designee. The appropriate Regional Office will provide the appropriate contact point in cases of non-compliance. The Director, Office of Civil Rights (DOE HQ), when requested, will provide assistance to contracting officers resolving non-compliance issues by providing assistance in obtaining a final decision from the OFCCP.

[49 FR 11998, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 58 FR 36365, July 7, 1993]

922.804 Affirmative action programs.

922.804-1 Nonconstruction.

In the event a prospective contractor or subcontractor is entering into its first contract containing the Equal Opportunity clause, the contracting officer shall determine that the prospective contractor understands and appears able to conform to the requirements of the EEO clause.

922.804-2 Construction.

(a) Construction contracts, including cost-sharing contracts, are subject to OFCCP orders applicable in particular areas.

(1) When a proposed nonexempt construction contract is within a geographic area where construction is subject to the provisions of Federal EEO Bid Conditions, Part I or Part II, the solicitation shall contain those bid conditions. The contracting officer shall include in such solicitation a provision that "the offeror shall adhere to the affirmative action plan (bid conditions) set forth in this solicitation."

(2) Lists of areas for which OFCCP has designated specific affirmative action requirements are available through the Procurement Executive. Contracting officers should assure that this list and copies of pertinent orders are made available to all concerned DOE offices and to DOE contractors and construction subcontractors for work to be performed in the specified geographical areas.

(b) *Other nonexempt construction contracts.* (1) When a proposed nonexempt construction contract is not in a "plan area" and is in the amount of \$10,000 or more, offerors must agree to comply with the Equal Employment Opportunity clause.

(2) When proposed nonexempt contracts of \$1,000,000 or over are not in plan areas and have not been designated as high impact, offerors also must submit to the contracting officer details regarding specific affirmative action steps to be taken by the offeror in connection with all work under the contract. Such details shall include estimates of the percentage of minority group persons expected to be employed

in each craft involved in the performance of the contract work. All solicitations for construction contracts shall reference the affirmative action requirements and the offeror's obligation to make good faith efforts to employ women in craft positions.

(3) Pursuant to the OFCCP order dated August 30, 1976, agencies shall develop "Special Bid Conditions" for use on high impact projects in non-plan areas. These special bid conditions will include mandatory goals and timetables for the utilization of minorities. The Procurement Executive using the criteria issued by OFCCP will determine those projects that are "high impact." The contracting officer is responsible for compliance with policies and procedures contained in the OFCCP "Construction Compliance Program Operations Manual." Language for inclusion in solicitations or contracts contained in the manual may be modified, provided all of the requirements are retained. The contracting officer shall develop the goals and timetables and shall confer with the appropriate OFCCP regional office. The Office of Civil Rights will provide assistance as necessary, when requested. Special bid conditions will be submitted by the contracting officer to the appropriate OFCCP regional office for approval unless otherwise directed by the Procurement Executive. When special bid conditions are applicable, adequate presolicitation lead time should be allowed for submission of the special bid conditions to OFCCP national and regional offices.

(c) An attempt to limit in any major respect the equal opportunity requirements included in an invitation for bids or request for proposals for a construction contract shall constitute grounds for a determination that the offeror does not qualify as a responsible offeror and for rejection of the bid or proposal. In the case of construction acquisition by DOE prime contractors, this determination shall be made only with the approval of the DOE contracting officer.

[49 FR 11998, Mar. 28, 1984, as amended at 56 FR 41965, Aug. 26, 1991, 58 FR 36365, July 7, 1993; 59 FR 9106, Feb. 25, 1994]

922.807 Exemptions.

(c) Contracting officer requests for exemption from E.O. 11246 should be directed to the Procurement Executive for submission to the Director, OFCCP.

Subpart 922.71—Whistleblower Protection for Contractor Employees

922.7100 General.

The policy at 970.2274 also applies to contracts other than management and operating contracts that involve work to be performed on-site at a DOE-owned or -leased facility.

[57 FR 57639, Dec. 4, 1993; 58 FR 39679, July 26, 1993]

§ 922.7101 Clause.

The contracting officer shall insert the clause at 970.5204-59, Whistleblower Protection for Contractor Employees, in contracts other than management and operating contracts that involve work to be done on behalf of DOE directly related to activities at DOE-owned or -leased sites.

[64 FR 12876, Mar. 15, 1999]

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG FREE WORKPLACE

Subpart 923.4—Use of Recovered Materials

Sec.

923.471 Policy.

Subpart 923.5—Workplace Substance Abuse Programs

923.570 Workplace substance abuse programs at DOE sites.

923.570-1 Applicability.

923.570-2 Solicitation provision and contract clause.

923.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 923.70—Environmental, Conservation, and Occupational Safety Programs

923.7001 Nuclear safety.

923.7002 Contract clauses.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).